



UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Fogel et al.)	Group Art Unit: 2673
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Application No. 10/623,034)	Examiner: Unknown
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Confirmation No. 6459)	
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Filing Date: 7/18/03)	
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Attorney Doc. No. Digenetics-001)	
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Title: Method for presenting a virtual reality environment for an interaction)	
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DECLARATION

I, David B. Fogel, hereby declare:

1. I am a co-inventor for U.S. patent application no. 10/623,034.
2. A software game titled "Evolutionary Checkers Starring Blondie 24" was publicly used and was offered for sale on 12-20-2001 at the Buena Park Computer Fair, in Buena Park, California, U.S.A. Documentation relating to some aspects of "Evolutionary Checkers Starring Blondie 24" was also made publicly available on 12-20-2001 at the Buena Park Computer Fair. One or more of claims 1-91, excepting claims 30, 31, 32, 33, 34, 35, 46, 60, 61, 62, and 63, in patent application no. 10/623,034, as filed on 7/18/03, might be construed to read on the software game "Evolutionary Checkers Starring Blondie 24", that was publicly used and offered for sale on 12-20-2001. A similar software game for chess rather than checkers, titled "Chess With an Attitude!", was publicly used and offered for sale in the U.S., and related documentation was publicly available, on or about December 14, 2002.
3. I am informed and believe, that software adaptations of board games, such as chess, checkers, Monopoly®, and Risk®, were known and were in public use and were on sale in the U.S., prior to 12-7-2001. Generally, these software games display a board that depicts the location of playing pieces. The board is typically set against a plain gray or otherwise indistinct background, although occasionally the board may be depicted as sitting on a table or other surface that has been drawn by an artist, and sometimes the table or other surface may be shown in the setting of a room, which is also drawn by an artist (and which is not a real-world background). None of the board games offers a video presentation of a real-world background (either static or animated). A common interface for these games provides either a two-dimensional top-down view of the board, or a three-dimensional angled view of the board, with an icon representing each player in a respective corner of the display. Typically, the icon is a

drawn or static picture of a human face or a cartoon character. The player must choose the type of view desired, but cannot view both simultaneously. For example, Chessmaster requires the player to choose either a two-dimensional or three-dimensional view of the game, and offers a two-dimensional view of potential future board situations in a window that is separated from the main game window. Chessmaster does not present simultaneous viewing of two-dimensional and three-dimensional representations of the chess board. Characters in these games, when represented by icons, in most examples are simply static images that make no movements and that do not interact with the player. However, these characters may be programmed to say things to the player, or to otherwise move or alter form based on conditions that occur in the game. Characters generally have a very limited set of character responses, such that characters will say or do the same things (for example, animate in a certain way) repeatedly when faced with the same situations in the game, and/or will stop moving or talking or otherwise acting as if they are aware that they are playing a game after offering a comment or motion. In some cases a character is represented by a complete figure, as opposed to merely a facial icon. None of the board games provides a continuous motion video figure of a character, that interacts dynamically with the player and the game situation, or that is displayed against a real-world background.

4. I am informed and believe, that "adult" entertainment software products, were known and were in public use and were on sale in the U.S., prior to 12-7-2001. Some of these adult entertainment software products feature video characters that interact, to some extent, with the "player". In some instances the software products utilize video of human model(s), to create "games" in which the player interacts with the video. These "games" can be standard games such as poker, or can have a sexual orientation that offers the player the ability to view videos of the models performing various acts.

Video models are used in the genre of standard games, and for example, in the game "Digital Strip Poker" (produced by Slickrock Software), the player competes against one of three models. In the "Digital Strip Poker" game, videos are played in relation to actions taken by the player, and based on previous actions at earlier times in the game, as well as due to inaction in which the video character may prompt the player to take an action (such as, to bet). The interface shows the selected model in a game window that is separated from the presentation of the cards to the player. When a player manages to win by taking all of the opponent's clothes, the interface halts (and does not present a continuous interacting video).

Another adult software product, "Glimpses Interactive" (produced by T&A Productions, 1995), permits the player to view different video segments. The videos run as short movies and then conclude. There is not further interaction with the player, and no changes in the presentation are made based on prior actions taken by the player.

Other adult software products require a player to move through a simulated maze and open various simulated portals that then similarly play movies. The same movies are played every time under the same conditions, and the movies do not correspond to any game setting.

Another adult software product, "Sirens" (produced by Pixis), provides an interface to the player wherein the player must navigate through a space ship and open portals that lead to encounters with various models. The player is then provided some control over which videos are played.

Videos are set against a black background and thus no attempt is made to offer an illusion of immersion in a real world environment. Also, videos halt between the player's actions. The videos do, however, include representations of the player's hands and other body parts (recorded from a male actor), which are viewed as part of the video, and these hands and other body parts interact with the model in the video according to the broad directions given by the player, such as clicking on a button to rotate the orientation of the model or specify the sexual act that the player wants to watch.

Other adult entertainment products, such as "Virtual Sex with Jenna", or "Virtual Sex with Nikki Tyler" (produced by Digital Playground), and other titles, offer a similar interface where the model is shown against a black background and the player controls the movies shown by choosing different options of the viewing position and sexual act that the player wants to watch. With "Virtual Sex with Jenna" or "Virtual Sex with Nikki Tyler", unlike with "Sirens", when a particular video reaches a conclusion, it loops back to the beginning instead of halting. However, the video does not transition automatically into a new video that would be appropriate for a character reaction to what the player has chosen to do.

Other adult software, published under the title "My Plaything", is similar to adult products discussed above, except that, rather than showing an actress against a black background, the actress is shown filmed in a room. However, there is no provision for substituting backgrounds. Some versions have a transparent menu that appears over the background. The transparent menu is a transparent overlay for selecting a new series of videos. This software does not provide simultaneous two dimensional and three dimensional views of the "playing area". Also, with this software, there are generally more videos, and the videos are generally longer, than in the adult software products discussed above, but the operation is the same in that the videos play until completion and then loop. The player can interrupt a video by making another selection, and the video will abruptly change to the start of a new video, and does not provide continuous motion.

5. Exhibit A shows information relating to "Evolutionary Checkers Starring Blondie 24", which was included in documentation that was made publicly available on 12-20-2001 at the Buena Park Computer Fair.

6. I am informed and believe that Exhibit B, is a copy of a screen shot from the adult software product "Digital Strip Poker".

7. I am informed and believe that Exhibit C, is a copy of a screen shot from the adult software product "Digital Strip Poker".

8. I am informed and believe that Exhibit D, is a copy of a DVD cover, from the adult entertainment product "Virtual Sex With Nikki Tyler".

9. I am informed and believe that Exhibit E, is a copy of a page from the instruction guide for the adult entertainment product "Virtual Sex With Nikki Tyler".

10. I am informed and believe that Exhibit F, is a copy of a page from the instruction guide for the adult entertainment product "Virtual Sex With Nikki Tyler".

11. I am informed and believe that Exhibit G, is a copy of a screen shot from the adult software product "My Plaything" (Sylvia Saint). I do not know the date for "My Plaything" (Sylvia Saint), but I am informed and believe that "My Plaything starring Jewel DeNyle" (July 1999) has features similar to those shown in the screen shot in Exhibit G.

12. I am informed and believe that Exhibit H, is a copy of a screen shot from the adult software product "My Plaything" (Sylvia Saint). I do not know the date for "My Plaything" (Sylvia Saint), but I am informed and believe that "My Plaything starring Jewel DeNyle" (July 1999) has features similar to those shown in the screen shot in Exhibit H.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any patent issued thereon.



David B. Fogel

August 4, 2004
Date